

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WENDY DOUGLAS, et al.,

Plaintiffs,

v.

RECONTRUST COMPANY, N.A.,

Defendant.

CASE NO. C11-1475RAJ

ORDER

**I. INTRODUCTION**

This matter comes before the court on Plaintiff Wendy Douglas's motion to file an amended complaint. No one requested oral argument, and oral argument is unnecessary. For the reasons stated herein, the court DENIES the motion (Dkt. # 45) and directs the clerk to dismiss this case with prejudice as to any claim predicated on the physical presence requirement of RCW 61.24.030(6), but without prejudice as to any other claim.

**II. DISCUSSION**

This case began as an effort by seven homeowners (an individual and three couples) to win damages after Defendant ReconTrust, N.A. acted as the trustee foreclosing the deeds of trust securing their homes (or at least initiating the foreclosure process). In two orders late last year, the court rejected Plaintiffs' claim based on the Washington Deed of Trust Act's physical presence requirement for trustees. RCW 61.24.030(6). Plaintiffs asked for leave to file an amended complaint, ReconTrust did

1 not object, and the court granted leave, subject to the condition that Plaintiffs not attempt  
2 to restate a claim based on the physical presence requirement. The court required  
3 Plaintiffs to either obtain ReconTrust's consent to an amended complaint or file a motion  
4 to amend.

5 What followed was a motion to amend, accompanied by a proposed second  
6 amended complaint. Dkt. # 43-1. Although the proposed complaint occasionally refers  
7 to "plaintiffs," e.g. ¶¶ 1, 10, it names only a single Plaintiff, Wendy Douglas. The  
8 complaint reveals almost nothing about her. She lives in Washington (¶ 1) and  
9 ReconTrust foreclosed on her home (¶¶ 10, 14). Putting aside generic allegations about  
10 her suitability to serve as a class representative, the complaint is otherwise silent about  
11 what happened to her.

12 ReconTrust, according to the complaint, breached its duty to be "neutral and  
13 independent while acting as a foreclosure trustee . . . ." ¶ 16. That is the sole allegation  
14 of wrongdoing. There are no allegations explaining how ReconTrust breached a duty that  
15 it owed to Ms. Douglas, because there are no allegations describing Ms. Douglas's  
16 interaction with ReconTrust. The sole cause of action that the complaint purports to raise  
17 is one based on the Washington Consumer Protection Act (RCW Ch. 19.86, "CPA").

18 Rule 15(a)(2) of the Federal Rules of Civil Procedure mandates that a court "freely  
19 give leave [to amend a complaint] when justice so requires." That statement embodies a  
20 "very liberal" policy in favor of amendment. *AmerisourceBergen Corp. v. Dialysist*  
21 *West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006). The policy is not without limits, however.  
22 Among other things, a court should not grant leave to amend where the amendment  
23 would be futile. *Id.*

24 Ms. Douglas's proposed amended complaint is futile. It does not state a CPA  
25 claim. To state a CPA claim, she would have to allege not only that ReconTrust violated  
26 the CPA, but that ReconTrust's violation caused her an injury. *Klem v. Wash. Mut. Bank*,

1 295 P.3d 1179, 1185, 1191 (Wash. 2013). Here, Ms. Douglas has not even succeeded in  
2 stating a CPA violation. Her complaint relies on wholly conclusory allegations that  
3 ReconTrust violated its duty “to serve as a neutral and independent foreclosure trustee.”  
4 ¶ 17. These are emblematic of the “unadorned, the-defendant-unlawfully-harmed me  
5 accusation[s]” that fail to state any claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

6 In her motion to amend, Ms. Douglas at least elaborates on how ReconTrust  
7 violated the CPA. She explains that ReconTrust is a subsidiary of Bank of America, and  
8 that ReconTrust thus deferred entirely to Bank of America in foreclosures of Washington  
9 deeds of trust in which Bank of America was the beneficiary. That practice at least has  
10 the potential to be unlawful, as the Washington Supreme Court explained in *Klem*.  
11 There, the court held that “the practice of a trustee in a nonjudicial foreclosure deferring  
12 to the lender on whether to postpone a foreclosure sale and thereby failing to exercise its  
13 independent discretion as an impartial third party with duties to both parties is an unfair  
14 or deceptive act or practice and satisfies the first element of the CPA.” *Klem*, 295 P.3d at  
15 1190.

16 What is missing, both in Ms. Douglas’s proposed complaint and in her motion to  
17 amend, is any allegation that ReconTrust breached any duty *to her*, and thus caused *her*  
18 harm. A plaintiff cannot base a CPA claim solely on a violation of the law, she must also  
19 show that the violation caused her an injury. *Klem*, 295 P.3d at 1191. There is no  
20 allegation, for example, that Ms. Douglas requested a postponement of the trustee’s sale  
21 of her property and ReconTrust declined that request by improperly deferring to a  
22 beneficiary to whom it was beholden. There is, as the court has explained, no allegation  
23 whatsoever about what ReconTrust did to Ms. Douglas, beyond the bare fact that it acted  
24 as the trustee in a foreclosure sale of her home. Ms. Douglas’s motion to amend is  
25 notable in that it contains no allegations whatsoever about her. When ReconTrust  
26 pointed out the absence of any allegation that its alleged wrongdoing had caused Ms.

1 Douglas harm, she responded in her reply brief that the mere fact that ReconTrust  
2 foreclosed on her home suffices to state a CPA claim. Pltf.'s Reply (Dkt. # 52) at 5. Ms.  
3 Douglas is mistaken.

### 4 III. CONCLUSION

5 For the reasons stated above, the court concludes that Ms. Douglas's proposed  
6 amended complaint fails to state a claim, and thus it would be futile to grant her leave to  
7 amend. The court accordingly DENIES her motion for leave to amend. Dkt. # 45.

8 The court directs the clerk to DISMISS this action. That dismissal is with  
9 prejudice as to Plaintiffs' claims based on the physical presence requirement of the Deed  
10 of Trust Act, but without prejudice as to any other claim. The clerk shall enter judgment  
11 for Defendant.

12 DATED this 25th day of September, 2013.

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16 The Honorable Richard A. Jones  
17 United States District Court Judge  
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